

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**AUGUST 29, 1995**

**NOTICE**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-0570-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**DAVID E. COLLINS,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Rusk County:  
JAMES C. EATON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ..

PER CURIAM. David Collins appeals his conviction for two counts of first-degree sexual assault of a child, after a trial by jury. The jury found Collins not guilty of a third count of first-degree sexual assault, rejecting the victim's testimony on that charge. Collins argues that several problems with the victim's testimony rendered her incredible as a matter of law and prevented the prosecution from proving his guilt beyond a reasonable doubt on the

remaining counts: (1) the victim contradicted herself on whether Collins made sexual contact with his hands; (2) she never identified the precise dates and times of the assaults; and (3) she failed to immediately report the sexual assaults to anyone. We reject Collins' argument and therefore affirm his conviction.

Appellate courts review convictions to determine whether the jury, acting reasonably, could have been convinced of the accused's guilt beyond a reasonable doubt by the evidence it had the right to accept as true. *State v. Nixa*, 121 Wis.2d 160, 167 n.2, 360 N.W.2d 52, 56 n.2 (Ct. App. 1984). Juries, not appellate courts, determine the credibility of witnesses and the weight of their testimony. *Gedicks v. State*, 62 Wis.2d 74, 79, 214 N.W.2d 569, 572 (1974). Appellate courts will upset verdicts only if the jury relied on evidence that was inherently or patently incredible. *Beavers v. State*, 63 Wis.2d 597, 603-04, 217 N.W.2d 307, 310 (1974). Whenever witnesses make contradictory statements, fact finders may accept or rely on either version and disregard the other, in total or in part. *State v. Dunn*, 158 Wis.2d 138, 143, 462 N.W.2d 538, 540 (Ct. App. 1990). In addition, fact finders may believe part of the testimony of one witness and part of the testimony of another even though the testimony, when read as a whole, may be inconsistent. *State v. Toy*, 125 Wis.2d 216, 222, 371 N.W.2d 386, 389 (Ct. App. 1985).

Collins has correctly pointed out that the victim's testimony contained flaws. Specifically, the victim did not report the sexual assaults immediately, never identified their precise dates, and contradicted herself on whether Collins made sexual contact with his hands. The jury, however, did not consider these imperfections in a vacuum. They were a small part of an array of factors that contributed to her credibility, including many that may have enhanced it, such as her demeanor, her lack of maturity, her overall character, her possible fear of the proceedings, her corroboration by other evidence, her lack of motives to fabricate, and her ability to sustain a good level of consistency on other details of the assaults. Furthermore, fact finders have a measure of freedom to tolerate some discrepancies in the testimony of child sexual assault victims and to discount their cumulative impact on those victims' overall veracity. See, e.g., *State v. Wachsmuth*, 166 Wis.2d 1014, 1022-24, 480 N.W.2d 842, 846-47 (Ct. App. 1992); see also *State v. Sharp*, 180 Wis.2d 640, 658-60, 511 N.W.2d 316, 324-25 (Ct. App. 1993). Here, in light of the fact that the victim did endure a large number of embarrassing questions and did provide a large amount of noncontradictory information in an intimidating setting, the

jury could rationally find the scattered flaws in her account insufficient to undermine her testimony's basic accuracy and overall truthfulness.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.